

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 13 of 1982

in

SPECIAL CIVIL APPLICATION No 1509 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SARDAR VALLABHBHAI REGIONAL ENG.COLLAGE

Appearance:

MR BY MANKAD instructed by MR. HM BHAGAT for
Appellant

MR RAWAL for Respondent No. 1 to 6

MR VJ DESAI for Respondent No. 7

NOTICE SERVED for Respondent No. 8

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 25/11/98

ORAL JUDGEMENT (Per Patel, J.)

State, being aggrieved by the decision of the learned Single Judge in Special Civil Application No. 1509 of 1977 delivered on 23.12.1980 has preferred this appeal.

2. A petition came to be filed on behalf of the Lecturers of Sardar Vallabhai Regional Engineering College contending that the State Government has not reasonably dealt with the staff by not paying Dearness Allowance or by giving only part of it. In view of the new pay scale, the employees of the Central Government were at the relevant time not entitled to get any D.A. Submission was made that the staff of the College was given scale fixed by the Central Government while DA was to be given as fixed by the State Government. In the instant case, post of Lecturer, in the year 1961 when the College came to be established, carried the time scale of Rs.350-850, which was a central pay scale. D.A. was at the rate of Rs.20/- as fixed by the Central Government in 1961, thus bringing the pay packet at Rs.370/-. So far as the State is concerned, a Lecturer recruited in 1961 used to get Rs.350/- as per the scale fixed by the Central Government and Rs.70/- as DA as sanctioned by the State Government, (total Rs.420/-). In the year 1963, a revision of pay was accepted with retrospective effect from 1.10.1961. A policy decision was taken at the time of starting the institution where the respondents were working. By exparte adjustment, the reshuffling of the DA because of the revision of the pay scale made operative from 1.10.1961 could not have been denied as held by the learned Single Judge. Considering the pay scales and DA, a mathematical calculation was made as under before the learned Single Judge.

Old Pay Scale (Central Govt.)	350-00
State Government DA	70-00

Total 420-00

Central Govt. pay scale	350-00
Central Govt. DA	20-00
Upward revision	30-00

Total (new scale) 400-00

Old Pay Scale (Central Govt.)	350-00
Upward Revision	30-00

DA on State rates 70-00

Total as per new scales 450-00

considering upward -----

revision of pay scale excluding

DA payable as per Central Govt.

and including DA payable as

per State Government.

3. It appears that considering these calculations, learned Judge held that there was the upper revision of substantive pay by Rs.30/-. The learned Judge held that "all that the State Government could legitimately do was not to pay DA at the rate of Rs.70/- to the Lecturer because in his new pay scale, the dearness allowance of Rs.20/- was already included. The Government should or could deduct only Rs.20/- out of Rs.70/- as far as the lecturers post is concerned". Considering the above calculations in the pay scale of Rs.400/- (new), plus Rs.50/- by way of DA thus making the total to Rs.450/-, which, compared with the original scale of Rs.350 + Rs.70 (total Rs.420/-) would be more by Rs.30/- (Rs.30/consider upward revision).

4. Representation was made which was not accepted by the Government. It is pointed out before this Court the decision of the State Government in bringing the revised pay scale after merger of DA was taken in pursuance of Government of India, Ministry of Scientific Research & Cultural Affairs, New Delhi's letter dated 16th July 1963, at Annexure 'F' to the petition. It is pointed out that the Central Government suggested revised pay scale on uniform basis for all the Regional Colleges. It is pointed out that the Central Pay Commission as well as Regional colleges suggested that DA was to be merged with the pay scales which was done for the Central Government employees also in pursuance of the central pay commission's recommendations. Letter dated 12.2.1962 (see page 152) indicated that the persons in the teaching category should be paid DA in accordance with the current State Government rules. It was also pointed out in the said letter dated 12.2.1962 that the specified scale cannot be revised in the light of any particular State Government's Commission's report except when the DA admissible to that scale is to be merged with the scale. In other words, the Central Government had as early as in 1962 envisaged a situation of merger of DA with the pay scale so far as persons in teaching category were concerned. A scheme was envisaged that the pay should be given on the basis of the Central Government's Rules and DA was to be given as per the State Rules. When the

College was established, DA was admissible as per resolution issued by State Government dated 24.12.1956 which is annexed as Annexure 'C' to the affidavit filed by K.B. Makwana, Under Secretary in this appeal. The employees continued to receive the DA as per the said Resolution till their pay scales were revised in 1966. It is further pointed out in the said affidavit that (see page 153) after the revision, those employees who had opted for revised pay scales were entitled to DA as per the new rules which were in force whereas those who did not opt for the pay scales were getting as per the rules prevailing before the revision, and such persons continued to get the benefit of the old scheme. Some did not opt for the new pay scale. It is certain that once option for revised pay scale was given benefit of revised pay scale and DA as per the revised pay scale was admissible. It appears that learned Single Judge has not taken this aspect into consideration. It is further pointed out in the affidavit of Mr. Makwana (see page 153 bottom) that the Government issued a Resolution dated 6.9.1963 whereby it provided that the revised rate of DA were to be as specified in the said resolution for those employees who were brought on the revised scales of pay. The resolution provided that persons drawing pay above Rs.320/- were not entitled to any DA. A copy of the said resolution is produced on the record at Annexure 'D' to the aforesaid affidavit of Mr. Makwana. It is, therefore, contended in the said affidavit that it is in view of this resolution, they were not entitled to any DA as their scale was more than Rs.350/-. In the resolution dated 6.9.1963 at Annexure 'D' to the affidavit (see page 168) it is provided that the revised rates of dearness allowance will be made applicable from 1st of October 1961. For employees drawing pay below Rs.150/-, DA admissible was Rs.10/-; for employees drawing pay between Rs.150 to Rs.300/-, DA admissible was Rs.20/- and for employees drawing pay between Rs.301 and Rs.320/- the DA admissible was the amount by which the pay falls short of Rs.320/-. Resolution dated 6th September 1963 at Annexure 'E' to the affidavit (see page 171) indicates that with effect from 1st April 1964, employees drawing pay below Rs.150/were entitled to DA of Rs.15/- for employees drawing pay between Rs.150 and Rs.300/-, DA admissible was Rs.25/- and for employees drawing pay between Rs.301 and Rs.325/-, DA admissible was the amount by which the pay fell short of Rs.325/-. Resolution dated 18th March 1964 at Annexure 'F' to the affidavit indicates that for persons drawing salary between Rs.300/- and Rs.349/were entitled to get DA of the amount by which the pay fell short of Rs.350/-. What is submitted before us is that the difference was not

required to be paid because as per the resolution persons falling within particular time scale were only required to be paid. It is therefore submitted that DA was to be given to employees as per the State Government's rules. It is submitted that the petitioners could not have claimed anything more than what was provided by the State Government as reflected in the resolutions referred to hereinbefore. Mr. Desai has pointed out from the affidavit (see page 157) that Shri K.K. Kandoi who was appointed as a Lecturer on 5.5.1962 and drew the payscale in the scale of Rs.350-850 received Rs.380 plus Rs.70 totalling to Rs.450. On 31.7.1963 after having opted for the revised scale, he was entitled for the new scale of Rs.400-950 and was entitled to get Rs.400 as pay plus Rs.50 as personal pay, in all Rs.450/-. In view of this, it was submitted that Shri Kandoi would get DA only if it is admissible to him. It is pointed out in the affidavit that DA which was granted by the State Government to its employees after 1.8.1963 was granted to all the employees of the College on the revised pay scales according to their option. It is further stated in the affidavit that the petitioner No.1 who opted for revision of pay scales on 5.5.1964 got the pay of Rs.510/- as revised in May 1964 (infact he got only Rs.444-20 as he exercised option only on 5.5.1964). In view of this, it is submitted before us that having exercised option of revised pay scale on 5.5.1964, the petitioners were eligible to get DA only as per the rules and got the same from April 1966 when it was admissible. Between 5.5.1964 and March 1966, no DA was admissible to petitioner No.1 as per the prevailing State Government Rules. It is submitted that once having exercised option in the new pay scale, DA on the new pay scale alone would be admissible and one cannot claim new pay scales and the DA as per the old pay scale. It is pointed out that during the period 1966 to 1972, the petitioners did get DA on the revised pay scales as declared by the State Government for its own employees from time to time under various Resolutions. It is further pointed out in the affidavit (see page 159) that it is not the petitioners case that they did not get any DA between 1966 to 1972. It is submitted that the petitioners have not suffered any loss.

5. Mr. Rawal, learned advocate appearing for the respondent-Lecturers submitted that the Court should not interfere in a matter when the learned Single Judge, after considering the effect of loss to the Government servant, has passed an order. It appears that when the pay scales were revised from 350 to 400, DA being paid to the Central Government servant was to the tune of Rs.20/and, therefore, it is submitted that Rs.30/- should

be considered as upward revision of the pay and DA should be considered to be merged to the extent of Rs.20/- only and on that basis the amount should be paid. It is required to be noted that it was for the petitioners to opt for remaining in the old scale and DA available at the relevant time. Once having opted for the new scales, the advantages or disadvantages of the new scales must accompany the scales. One cannot say that I need the new scale and the old DA. In any case, considering the example which is given in the affidavit filed on behalf of the appellant referred to hereinabove, it is clear that on opting for the new scale, one is not put at a loss. Mr. Rawal could not point out a single instance showing loss.

6. Mr. Rawal submitted that there is discrimination. We find no merits in this submission. If other similarly situated State Government servants receiving similar salary were not getting DA, we fail to understand how the petitioners can state that they have been discriminated.

7. In view of what we have stated hereinabove and in view of the fact that once having opted for the revised pay scale, a person will get the salary as per the revised pay scale and DA if any admissible as per the resolutions passed by the State Government from time to time. The State Government is duty bound to pay DA as per resolutions. If an employee has opted for the revised scale, he will have to be paid DA only as per the resolutions issued by the State Government from time to time. In view of this, we allow this appeal. The judgment and order passed by the learned Single Judge on 23.12.1980 in Spl. C.A. No. 1509 of 1977 is quashed and set aside.

8. The judgment of the learned Single Judge having been quashed, a question arises about the recovery of the amount paid pursuant to the orders passed by the learned Single Judge. We leave this matter to the State to decide considering the facts that (i). the matter is very old; (ii). It is pointed out to us by the learned advocates that out of the total 213 staff members who were benefitted by the implementation of the judgment, 141 persons have resigned and left the institute and they are not in the pension scheme and their whereabouts are not known to the college; (iii). six employees have expired; and, (iv). only 29 of the beneficiaries are now drawing pension from the College; (v). that the amount recoverable is very meager and we are told that none is paid difference of more than Rs.13,000/-, and, (vi).

only 36 beneficiaries are now in employment. Considering the meager amount paid to each individual, the State shall consider the case in the light of the aforesaid situation whether to recover the amount paid or not.

The appeal stands allowed accordingly.
csm.,/ -----